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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,894	12/14/2001	Paul Joseph Datta	15,075	9031

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KIMBERLY-CLARK WORLDWIDE, INC.  
401 NORTH LAKE STREET  
NEENAH, WI 54956

EXAMINER

REICHLE, KARIN M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/017,894

Applicant(s)

DATTA ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 3-8, 11-14 and 18-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 9, 10 and 15-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7-14-03</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 3-8, 11-14 and 18-21 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.

### *Specification*

#### *Drawings*

2. The drawings were received on 3-8-04. These drawings are approved by the Examiner. However see discussion in following paragraph.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention as claimed in claim 16 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the

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renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Contrary to Applicant's arguments the Figures do not show the fastener engageable into the back waist region.

### *Description*

4. The abstract of the disclosure is objected to because the 1-17-05 abstract still includes grammatical errors on lines 1-4. For example, on line 2, "can be made by having" could be --include-- and on line 4, are words missing? Correction is required. See MPEP § 608.01(b).

5. The disclosure is objected to because of the following informalities: 1) In the 1-17-05 amendment to page 10, line 13, lines 5 and 10 are grammatically incorrect. 2) On page 2, line 17, line 9, " '79' " should be --79--. 3) Regardless of Applicant's arguments the description would be in better form if the side edges which the component 66 extends beyond are described as those of the chassis or combination of elements 28, 42 and 44 not those of the entire diaper or article 20.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

6. Claims 1-2, 9-10 and 15-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Still in regard to claim 1, are the fastener area and the at least two zones of first and second zones of fastening material one and the same, i.e. how many fastener areas at a minimum are there? Two, i.e. the first zone and the second zone? Three, i.e. the first zone, the second zone and the fastener area?

***Claim Language Interpretation***

7. “Disposable” is defined as set forth on page 11, lines 19-21. Although not explicitly defined in the specification, “prefastened”, in light of the disclosure at page 2, lines 3-30, and page 8, lines 29-31, is considered as configured when fasteners are attached, i.e. a pant-like configuration, to be pulled up or down over the hips of a wearer, i.e. prior to application to the wearer, but does not require forming of such configuration during the manufacturing process. The terms “multiple property”, “non-abrasive” and “oversized” have not been specifically defined and therefore will be accorded their common, i.e. dictionary, definition. Thus, “multiple property” is defined as having more than one property, i.e. any property. “Non-abrasive” is defined as not “causing abrasion, harsh; rough”, not “to rub off or wear away by friction”. “Oversized” is considered a relative term absent claiming of specific dimensions thereof. With regard to the term “mechanical fastening material” see page 9, lines 2-3, and page 22, lines 7-10.

***Claim Rejections - 35 USC § 102***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 1-2 and 9-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Kline et al '908 (and thereby Battrell '527).

Claim 1, first full paragraph: see Claim Language Interpretation section supra, Figures 1-3, elements 20, 28, 40, 42, 44, 46, 48, 50 and 52, col. 2, first full paragraph, col. 3, lines 12-14, the Summary of the Invention section, col. 17, lines 7-13 and col. 25, line 39-col. 26, line 6.

Claim 1, second full paragraph: It is noted that size of the fastener area of the fastener relative to the overall size of the fastener has not been claimed, i.e. at a minimum it can be only a portion thereof. It is further noted that the engagement ability of the first and second materials has not been claimed, i.e. could be the same, nor is it claimed that the engagement zone is also non-abrasive, i.e. both zones could be nonabrasive, equally so or not. The claim does not require that the zone be non-abrasive due to the second material. The claim also does not require that the materials be non-unitary, that each zone only includes the one material, that the zone be entirely covered by the material or that the first and second materials have to be different materials. The zones as claimed could be two zones of the same material.

The Kline patent teaches a fastener, 62 or 64, with 202, which has a longitudinal direction, a lateral direction and multiple properties, see, e.g., col. 16, lines 34-62, i.e. different strengths and permeabilities, or col. 17, lines 32-37, and thereby Battrell '527 at col. 2, line 13-17, i.e. has both the property of sheer stress resistance and peel force. The Kline patent teaches a fastener area, see, e.g., col. 18, lines 8-9 and col. 22, lines 17-19, i.e. any portion of the fastener.

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The Kline patent teaches at least one engagement zone of a first mechanical fastening material and at least one engagement zone of a second mechanical fastening material, see, e.g., col. 23, lines 10-13 and col. 17, line 14-col. 18, line 6, i.e. multiple zones of mechanical fastening material, and/or Figure 7, col. 16, lines 30-62, col. 17, line 14-col. 18, line 6, col. 18, lines 8-9 and col. 22, lines 17-19, i.e. zones 253 and 254 which can include mechanical fastening material, and/or col. 17, lines 14-18 and 32-37, and thereby Battrell '527 at Figures 1-2, col. 7, line 60-col. 8, line 2, col. 10, lines 61-64, col. 11, lines 53-55, col. 12, lines 13-24, i.e. mechanical fastening material having different zones due to nonuniform pattern, size, spacing and/or adhesive coverage. The Kline device teaches at col. 22, lines 9-12 that the fasteners, i.e. all the zones, do not irritate the wearer's skin. Since "irritate" is defined as "to chafe or inflame" and "chafe" is defined as "to wear away or irritate by rubbing", the fasteners are "nonabrasive", see Claim Language Interpretation section supra. As similarly set forth in that section, the terminology "oversized" is considered relative absent claiming of specific dimensions thereof. Therefore the Kline fastener is considered "oversized". See also col. 22, lines 17-19 and col. 22, lines 25-51, i.e. the fastener provides stability between waist regions and maintains a pant-like configuration. Alternatively, the "wherein" clause of claim 1 recites properties, function and capabilities of the claimed structure. The Kline device also includes such structure. Therefore, there is sufficient factual evidence to conclude that the properties, functions and capabilities of such claimed structure would also be inherent in the same structure of Kline. See MPEP 2112.01.

Claim 2: It is noted that the longitudinal directions of the fastener and the article are not required to be parallel. Note, again, Figure 7, col. 16, lines 30-62, col. 17, line 14- col. 18, line 6, col. 18, lines 8-9 and col. 22, lines 17-19, i.e. the zone 253 or a portion thereof and an equal and

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adjacent portion of zone 254 can include the engaging component 202 and such zone 253 or portion thereof and equal portion of zone 254 define the fastener area. Attention is again invited to the discussion of the scope of the language of the second full paragraph of claim 1 *supra*.

Claim 9: See col. 17, lines 62-63, and lines 32-37 of Kline, and thereby col. 8, lines 40-41 of Battrell '527.

Claim 10: See col. 17, lines 32-37 of Kline, and thereby col. 8, lines 30-56 of Battrell '527.

Claim 15: See Figure 3 of Kline.

Claim 16: See, e.g., col. 21, lines 5-16 and Figure 2 and col. 12, lines 26-29 of Kline, i.e. the landing member would be identical to the fastener of claim 1, discussed *supra*, and thus would engage the engaging component of the rear waist region.

Claim 17: See, e.g., Figures 2, 3 and 7.

### ***Response to Arguments***

10. Applicants remarks with regard to the informal matters on pages 9-13 of the 3-3-04 response have been noted but are either deemed moot in that they have not been repeated or are deemed not persuasive for the reasons set forth *supra*. With regard to the remainder of the arguments with regard to the claim language interpretation and the prior art, such arguments have been considered but are deemed not persuasive because such arguments are narrower than the definition of the terminology clearly set forth in the specification and/or the claim language and/or the teachings of the prior art. For example, while the terminology "prefastened" as set forth by the specification can include forming the configuration during manufacture it is not



limited thereto by the specification or claim language because nowhere is such explicitly set forth and while it is disclosed that such configuration is provided prior to application such does not require only during manufacture. Likewise, other portions of the specification relied upon by Applicants in their arguments with regard to other definitions do not explicitly describe the contended term is limited to that as argued. Nor does the claim language set forth the terms as argued by Applicants, e.g. the claims do not require the claimed multiple properties being fastening related or what they are limited to, Table 31 does not define what the terminology "oversized" is as argued by Applicant, i.e. is it at least 58mm, or at least 32 mm, between these two? Nor does the claim language distinguish over the prior art, e.g. the claims require a nonabrasive zone but does not require it be nonabrasive because the material thereof is nonabrasive rather than it being positioned so it is nonabrasive. With regard to claim 2, it is not required that the one engagement zone be only engaging, i.e. can also be nonabrasive, and that the one nonabrasive zone be only nonabrasive, i.e. can also be engaging. See also portions of Kline and Battrell cited which disclose different zones, e.g. some with adhesive some without, some with more bonds some with less bonds, of any size or shape, e.g. a longitudinal half as shown in Figure 7 of Kline.

### ***Conclusion***

**11. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

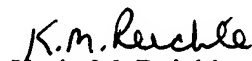
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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
March 28, 2005